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Supreme Court, U.S.
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No. 09-57

IN THE

Supreme Court of the United States

October Term, 2008

PETER PAUL MITRANO,
Petitioner,

versus

VIRGINIA L. KELLY,
Respondent.

On Petition for a Writ of Certiorari to the
Court of Special Appeals of Maryland

APPENDIX

Peter Paul Mitrano
Pro se
4912 Oakcrest Drive
Fairfax, Virginia 22030

Petitioner

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PETER PAUL MITRANO	*	**IN THE**
	*	**COURT OF**
	*	**APPEALS**
v.	*	**OF MARYLAND**
	*	**Petition Docket**
	*	**No. 544**
	*	**September Term,**
	*	**2008**
	*	(No. 531, Sept.
	*	Term, 2008 Court
VIRGINIA LEE KELLY	*	of Special Appeals)

O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

DATE: February 13, 2009

PETER PAUL MITRANO	*	**IN THE**
	*	**COURT OF**
	*	**APPEALS**
v.	*	**OF MARYLAND**
	*	**Petition Docket**
	*	**No. 331**
	*	**September Term,**
	*	**2007**
	*	(No. 2804, Sept.
	*	Term, 2006 Court
VIRGINIA LEE KELLY	*	of Special Appeals)

O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

DATE: December 7, 2007

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0531

September Term, 2008

PETER PAUL MITRANO

v.

VIRGINIA LEE KELLY

Hollander,
Graeff,
Moylan, Charles E., Jr.,
(retired, specially assigned),

JJ.

Opinion by Moylan, J.

Filed: November 21, 2008

59774

On January 16, 2007, the appellant, Peter Paul Mitrano (the "Father"), a resident of the Commonwealth of Virginia, filed suit in the Circuit Court of Montgomery County, Maryland, against his former wife, the appellee, Virginia Lee Kelly (the "Mother"), a resident of the State of New Hampshire. The suit was styled as a "Petition for Enforcement of a Virginia Custody Order." Following a hearing on April 18, 2008, Judge Michael D. Mason granted the Mother's motion to dismiss the Complaint with prejudice on the ground that Maryland has no jurisdiction over the suit. We wholeheartedly affirm Judge Mason's decision as undeniably correct.

Some background is desirable simply to emphasize the utter inappropriateness of this suit's ever having been filed in a Maryland court. The Mother and Father were married in 1984. They were divorced in Virginia in 1992. Three children were born of the marriage: Christina Lee Mitrano, born on October 4, 1985, and now 23 years of age; Peter Paul Mitrano, born on December 27, 1986, and now 21 years of age; and Christopher Louis Mitrano, born on December 21, 1991, and now 16 years of age. Originally all three children were the subject matter of this protracted custody squabble that has raged up and down the Eastern Seaboard of the United States, in state and federal courts alike, for 16 years. The two elder children are now emancipated. Christopher Louis Mitrano, who is just a year and a few weeks short of his own emancipation,

is the only remaining pawn in this seemingly interminable custody struggle.

In the immediate wake of the 1992 divorce, a custody hearing was held in the Circuit Court for Fairfax County, Virginia, on July 6, 1992. On September 4, 1992, that court filed the custody order that the Father continues to rely upon as the last valid and the only controlling legal action taken in this case. In it, the Mother and the Father were awarded joint physical and legal custody of the three children. The Father was awarded primary physical custody, with generous visitation privileges granted to the Mother. The custody order was incorporated into the divorce decree. To the Father's ultimate chagrin, however, time and tide moved on beyond 1992.

In the spring of 1993, the Father decided to move, along with the children, to New Hampshire. By mutual agreement, the Mother followed them there. They all lived together in the Father's house in Hanover, New Hampshire, from 1993 to 2000, although the Mother and Father did not live as husband and wife. Following a "spanking incident" and a total break-down in the relationship between the Father and Christina, a Family Division judge, in the Lebanon Family Division of Grafton County, New Hampshire, on December 28, 2000, granted to the Mother the temporary custody of Christina. The Mother moved out of the Father's house into a rented apartment of her own. Prior to the hearing in New Hampshire, the Father actually filed a trial memorandum, in which, incidentally, he did not

in any way question the jurisdictional right of New Hampshire to adjudicate the custody issue.

After the hearing, at which the Father was present and did not contest the jurisdiction of the New Hampshire courts to adjudicate regarding the custody of his children, but before the order of December 28, 2000, was filed, the Father, without prior notice to the Mother, took their two sons on an all-night drive to Virginia. The Mother moved to have the Father found to be in contempt. On January 11, 2001, the New Hampshire court ordered that the custody of the sons also be switched to the Mother but refrained from finding the Father in contempt.

That order spawned a flurry of furious activity by the Father. Before returning his two sons to New Hampshire, the Father, on January 5, 2001, filed a petition with a circuit court judge in Fairfax County, Virginia for an emergency order prohibiting the return of the children to New Hampshire. The Virginia court records show that:

> Upon learning that the children in question had been in the jurisdiction for less than two weeks and that a facially valid custody order issued by a court in New Hampshire was in existence, the court denied the Petitioner's motion.

(Emphasis supplied).

Notwithstanding that order, the Father, on January 8, 2001, presented a similar petition to a second Fairfax County judge. Following its denial, he petitioned yet a third Fairfax County judge with the same petition. The persistent refrain throughout all three petitions was that any effort to assume jurisdiction over the custody question by New Hampshire was null and void and that the controlling order, therefore, remained the Fairfax County, Virginia, order of September 4, 1992.

Ultimately all three Fairfax County judges conferred and issued a collective order rejecting the Father's thesis:

> Judge Roush conferred with Judge Valentin and Judge Hudson and denied the Emergency Petition. Judge Roush advised plaintiff that New Hampshire had jurisdiction in this matter.

(Emphasis supplied).

With respect to none of these petitions did the Father give notice to the Mother. The Father appealed those orders of the circuit court, which appeal was summarily denied on June 19, 2001. Having failed to elicit a sympathetic response from Virginia, the Father refocused his efforts on New Hampshire.

In the United States District Court for the District of New Hampshire, the Father actually filed suit against the New Hampshire state court

judge who had ordered the transfer of custody to the Mother. Mitrano v. Martin (No. CIV.01-153-M, Unpublished opinion filed on January 22, 2002), 2002 WL 122384 (D.N.H.). In granting the defendant trial judge's motion to dismiss, the federal District Judge characterized the suit:

> In this federal suit, plaintiff seeks declaratory and injunctive relief, as well as damages, against a sitting New Hampshire judge--the judge who presides over his child custody case. ... Plaintiff also challenges the New Hampshire court's jurisdiction to resolve issues related to custody of his minor children and vaguely asserts that his various complaints all add up to an actionable deprivation by the judge of his federal due process rights.

(Emphasis supplied).

On the jurisdictional issue, the federal court held that a challenge to New Hampshire's jurisdiction was a matter to be decided by the state courts of New Hampshire and ultimately, if necessary, by the Supreme Court of New Hampshire.

> [T]he New Hampshire Superior Court's exercise of jurisdiction over his child

> custody case, whether legally correct or incorrect, and its order finding him in contempt of that court, whether legally correct or incorrect, are matters which he can litigate in the state courts—appeals lie in the New Hampshire Supreme Court ....
>
> ...
>
> . . . Plaintiff is ... fully able to litigate his jurisdictional theories, claims of innocence regarding the contempt finding, and federal constitutional issues in the ongoing state proceedings.

(Emphasis supplied). The United States Court of Appeals for the First Circuit affirmed the decision of the District Court. *Mitrano v. Martin,* Nos. 02-1231, 02-1348 (1st Cir., August 29, 2002).

Meanwhile, back at the state court level, the Father had filed an emergency petition with the Supreme Court of New Hampshire on January 9, 2001. He sought "to restrain and stay the actions of the Grafton County Judicial Branch, Lebanon Family Division." The petition also requested an order enforcing the September 4, 1992 custody order of Fairfax County, Virginia. In that petition to the New Hampshire Supreme Court, the Father made precisely the same argument that he now makes before us. He claimed that the 1992 Virginia custody order was still valid because the apparently supervening New Hampshire custody order was

null and void for the reason that New Hampshire had no jurisdiction over the parties.

The Father locked in on, as the critical jurisdictional date, October 16, 2000, the day on which the Mother filed a petition to modify the custody order. In his petition to the Supreme Court of New Hampshire, the Father alleged that the Mother became a legal resident of Vermont on October 1, 2000. That was apparently the date on which the Mother had moved out of the house in Hanover, New Hampshire that she shared with the Father and the children and across the Connecticut River into a rented apartment in Norwich, Vermont. The children were still on the east side of the river, with the Father, in Hanover.

With respect to the children, however, the Father, seizing upon the then controlling weekend visitation schedule, alleged that they lived with their Mother in Vermont "from at least 6:00 P.M. on Friday, October 6, 2000 until school started at approximately 8:00 A.M. on Monday, October 9, 2000 and from 6:00 P.M. on Friday, October 13, 2000 until school started at approximately 8:00 A.M. on Monday, October 16, 2000." The Father himself acknowledged that he had been "a resident of the State of New Hampshire from 1993 until December 20, 2000," but claimed that he became a resident of Virginia on December 21, 2000, the date of his all-night drive to Virginia with his two sons. Not surprisingly, the Supreme Court of New Hampshire unanimously denied the Father's emergency petition on January 22, 2001.

On the same day that he filed his emergency petition to the Supreme Court of New Hampshire, the Father moved into simultaneous action in Vermont. On January 9, 2001, he filed in the Vermont Family Court for Windsor County, Vermont, an "Emergency Petition for Enforcement of the Attached Custody Order." The "attached custody order" was the September 4, 1992 custody order from Fairfax County, Virginia. The argument that the Father then made in Vermont is precisely the argument that he now makes in Maryland. On January 23, 2001, the presiding judge in the Windsor County Family Court granted the Mother's motion to dismiss. In the accompanying opinion, the presiding judge provided the explanation, which we hereby adopt as equally pertinent to the present appeal.

> Petitioner does not deny that the New Hampshire Family Court has issued orders addressing custody. Instead, he argues that the New Hampshire orders are not entitled to full faith and credit because of failure to comply with the PKPA, 28 U.S.C. § 1738A. Petitioner stresses that respondent and the children are now living in Norwich, Vermont, and that all of the parties ceased residing in the State of New Hampshire by December 20, 2000. According to petitioner's argument, New Hampshire is thereby deprived of PKPA

jurisdiction, under § 1783A(c)(2)(A)(ii).

However, this court disagrees with petitioner's interpretation of the PKPA. "Home State" is defined as follows:

> § 1738A(b)(4). "Home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, ... Periods of temporary absence of any persons are counted as part of the six-month period.

Based on the undisputed facts, the condition under § 1738A(c)(2)(A)(i) was met because New Hampshire was the "home state" on the date of the commencement of the proceedings. Contrary to petitioner's argument, New Hampshire was not deprived of PKPA jurisdiction merely because the parties left.

Petitioner is not entitled to enforcement of the Virginia Order, because it has been superseded by the New Hampshire Order.

(Emphasis supplied).

The Father appealed that dismissal to the Supreme Court of Vermont. On August 29, 2001, the Vermont Supreme Court completely affirmed the decision of the Windsor County Family Court, except that it remanded the case so that the trial court could consider granting an award of attorney's fees to the Mother. The per curiam opinion of the Vermont Supreme Court pointed out that New Hampshire was properly exercising jurisdiction over the custody dispute and that, under the Parental Kidnapping Prevention Act ("PKPA"), 28 U.S.C. § 1738A(a), Vermont would be foreclosed from acting in the case. As Judge Mason ruled in the present case, that same foreclosure applies here. We find pertinent and persuasive that portion of the Vermont Supreme Court's opinion in *Mitrano v. Kelly,* 172 Vt. 643, 785 A.2d 191 (Vt. Sup. Ct. 2001).

> Father ignores the trial court's more important determination that New Hampshire was properly exercising jurisdiction over the question of custody of the parties' children at the time he sought relief in the Vermont court. This creates a more fundamental jurisdictional problem under the PKPA. Subsection (g) of the PKPA states:

> A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

28 U.S.C. § 1738 A(g). If New Hampshire was properly exercising jurisdiction under the PKPA, the pendency of the action there would prevent Vermont from exercising jurisdiction under the statute.

Father argues, however, that the New Hampshire court was not exercising jurisdiction consistent with the PKPA because he moved to Virginia with the parties' sons on December 20, and because mother had moved to Vermont on October 6, the parties' daughter

	to follow the New Hampshire Order, he produced Peter, Jr., and Christopher for visitation with Kelly.[4] Kelly moved the children to Vermont.
January 9, 2001	Mitrano filed an emergency petition in the Supreme Court of New Hampshire seeking to stay the actions of the Family Division awarding sole temporary custody of Peter, Jr., and Christopher to Kelly.
January 9, 2001	In the Vermont Family Court for Windsor County, Mitrano filed

[4]In *Mitrano v. Kelly*, (No. 2001-099) (August Term, 2001) (filed August 29, 2001), the Supreme Court of Vermont commented that as Mitrano "concedes in his notice of related matters, the Virginia courts [after entering an order stating that Mitrano should follow the New Hampshire Order] declined to exercise jurisdiction over the matter in response to two of [Mitrano's] petitions to enforce the original 1992 divorce order, deferring to the New Hampshire court."

> jurisdiction over modification). Therefore, the trial court properly determined that the New Hampshire court was exercising jurisdiction consistent with the PKPA.
>
> [1]The fact that mother moved to Vermont on October 6, and the fact that the children visited with her the two weekends preceding October 16 does not change the "home state" status of New Hampshire at the time mother filed her petition seeking to modify custody. 28 U.S.C. § 1738A(b)(4) (providing that temporary absences by the children from their home state are counted as part of the six-month period that qualifies a state as such).

(Emphasis supplied). The Supreme Court of the United States denied certiorari in the case. 534 U.S. 1115, 122 S. Ct. 923, 151 L.Ed.2d 887 (2002).

Thwarted by the Supreme Courts of both Vermont and New Hampshire, the Father moved back to federal court, filing in October of 2003, almost identical suits in the United States District Courts for the Eastern District of

Virginia and for the District of New Hampshire. In those suits, moreover, he expanded his list of targets. The Report and Recommendation of the United States Magistrate Judge for the Eastern District of Virginia listed the defendants:

> The defendants in the present action were Virginia L. Kelly, plaintiff's ex-wife; William D. Philips, plaintiffs ex-wife's attorney; Martha M. Davis, plaintiffs ex-wife's attorney in New Hampshire child custody proceedings; Debora A. Blake, guardian ad litem for plaintiffs children; Elaine R. Warshell, the Vermont attorney who represented plaintiffs ex-wife in the custody dispute; Jonathan Ross, plaintiffs former New Hampshire attorney; Wiggin & Nourie, plaintiffs former New Hampshire law firm; and the Honorable Larry B. Pletcher, the Honorable John Peter Cyr, and the Honorable Willard G. Martin, Jr., judges of the New Hampshire family court.

The District Court in New Hampshire dismissed the Father's suit on May 7, 2004 and the First Circuit affirmed. Mitrano v. Warshall, Nos. 04-1784 and 04-2230 (1st Cir., September 16, 2005). The District Court for Eastern Virginia dismissed the Father's suit and

the Fourth Circuit affirmed on October 20, 2005:

> Having reviewed the briefs and applicable law, we conclude that the district court correctly decided the issue before it. We accordingly affirm the dismissal of Mitrano's claims.

In the federal case in Virginia, the defendants moved for sanctions pursuant to Rule 38 of the Federal Rules of Appellate Procedure, permitting the court to impose "just damages and single or double costs" for frivolous appeals. In recommending that sanctions be imposed, the U.S. Magistrate Judge observed:

> Plaintiff has filed frivolous suits in Vermont, New Hampshire, and Virginia against anyone having anything to do with his child custody dispute. Furthermore, as noted above, it appears that plaintiff has a history of bad faith conduct in previous unrelated litigation. Given the remarkable and deplorable history of this plaintiff, requiring him to pay the expenses of those he has wronged appears necessary to deter him from further abuses.

(Emphasis supplied).

In affirming the imposition of sanctions, the Fourth Circuit was even more scathing in its denunciation of the Father's obsessive behavior.

> Mitrano has proven himself to be extremely litigious. He has persisted in filing multiple actions despite the unanimous rejection of his claims by every court that has considered them. With regard to his activity in the federal courts, Mitrano has filed a declaratory judgment action in the District of New Hampshire, this action, and an action nearly identical to this one in the District of New Hampshire. In appealing the dismissal of each of these actions, he has ignored repeated warnings from the district courts regarding the frivolity of his claims.
>
> Moreover, when this appeal is considered together with all connected litigation and evidence of Mitrano's prior conduct in unrelated lawsuits, a clear pattern of harassing lawsuits and abusive behavior emerges.

(Emphasis supplied).

Back in New Hampshire, a final court hearing on the custody issue was held on September 27, 2002. The Father participated in

that hearing and called numerous witnesses. On that day the court passed a final order, awarding the Mother sole custody of the three children. The Father was ordered to make child support payments in the amount of $1,406 per week. The Mother was also granted an attachment against the Father's property in Hanover, where the family had lived between 1993 and 2001 and which the Father continued to own thereafter. On December 10, 2002, the Father was found in contempt of court for failure to make his child support payments. The arrearages at that time were $14,560. They continued to escalate. An execution on the Father's real estate was ordered on August 15, 2005. The Father did not appear in New Hampshire and warrants were issued for his arrest.

A decree of the Family Division Court filed on February 20, 2008, declared that the Father's "unpaid child support arrearage and related obligations" through June 20, 2005, totaled $243,357.39 plus interest of $8,287.92. The Mother asserted that the Father had further accrued an additional $182,780 in unpaid child support obligations through December 19, 2007, for a total due of $447,055.94 plus accrued interest. At an execution sale of the Hanover real estate on December 13, 2006, the Mother was the highest bidder and is now the owner of the home, where she lives with her younger son, Christopher, the subject of the custody battle.

In the face of this adjudicative juggernaut, it is incredible that the Father would elect to

bring this suit in Maryland. The slender jurisdictional reed which the Father grasps is his allegation that "Kelly moved to the State of Maryland in the Fall of 2005 and left the State of Maryland after January 16, 2007." It was on January 16, 2007 that the present suit in Montgomery County was filed. With respect to Christopher, the object of this custody battle, the Father's affidavit which accompanied his complaint further alleged that "the subject child (CLM) has lived with the defendant (the Mother) in the State of Maryland since approximately the Fall of 2005 (except for attending boarding school in the State of New York during the school year for 2005/2006)."

The Mother, for her part, explained that in the Fall of 2005, she temporarily moved to Maryland to be near her sister because of extreme financial distress, severely aggravated if not totally caused by the arrearages in child support payments of over $400,000. With the execution of December 13, 2006, on the Father's house in Hanover, however, her financial horizon markedly brightened. She and Christopher are both now back in the home in Hanover into which they first moved in 1993. The Mother actually maintains that when the present suit was filed, on January 16, 2007, both she and Christopher had already left Maryland to return to New Hampshire. For our analysis, however, it really does not make any difference.

At the hearing on April 18, 2008, Judge Mason immediately sensed the bankruptcy of the Father's position. Although the Mother's

argument seems unassailable that Maryland has no jurisdiction over this custody dispute, it is unnecessary to belabor the issue. With a sure instinct for the jugular, Judge Mason by-passed that question by assuming that he had jurisdiction over the case.

> MR. MITRANO: [T]his Court has subject matter jurisdiction.
> THE COURT: Well let's assume I do.
> MR. MITRANO: Okay, I just wanted to –
> THE COURT: I assume I have subject matter jurisdiction.
> MR. MITRANO: – I just wanted to make sure –
> THE COURT: Let's assume I do.
> MR. MITRANO: – okay. Accepting that, the next issue that was raised is whether this Court has personal jurisdiction.
> THE COURT: Assume I do.

(Emphasis supplied).

Cutting to the core of what was before him, Judge Mason said, in effect, "Forget jurisdiction. Lets assume I have it. What then? Where do you go from there? What is it, precisely, that you want me to do?" Formally, what the Father wanted was for Judge Mason to enforce a 16-year-old custody order from the State of Virginia. In order to do that, however, it would have been necessary for Judge Mason

to determine that numerous intervening rulings and adjudications by the courts of the State of New Hampshire were null and void.

Judge Mason dismissed the Father's suit for three separate reasons. We would affirm that dismissal for any one of those reasons.

> THE COURT: [F]irst with respect to the motion to dismiss, it's granted. I find that under Family Law Section 9.5-207, that at a minimum, assuming this Court had jurisdiction, this would be an inconvenient forum to litigate these issues and the proceedings would be better litigated in the State of New Hampshire.

(Emphasis supplied).

Maryland Code, Family Law Article, § 9.5-207(a) provides:

> (a) Action if this State is inconvenient forum.--(1) A court of this State that has jurisdiction under this title to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum.

> (2) The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(Emphasis supplied).

The second reason advanced by Judge Mason for dismissing the suit was that there was an action with respect to the custody of Christopher then pending in the court system in New Hampshire.

> THE COURT: Beyond that, I find under Family Law 9.5-206 that there is an action pending with respect to the custody of the child in the State of New Hampshire, pursuant to their order which originally issued, I think, in '02 as we have been discussing it --
>
> MR. MITRANO: September 27th, 2002.
>
> THE COURT: -- and that after exercising their discretion as of that date they've never relinquished their jurisdiction, so I grant the motion to dismiss on at least those two grounds.

(Emphasis supplied).

Family Law Article, § 9.5-206(a) provides:

> (a) When other state more appropriate.-- Except as otherwise provided in § 9.5-204 of this subtitle, a court of this State may not exercise its jurisdiction under this subtitle if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this title, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under § 9.5-207 of this subtitle.

(Emphasis supplied). Also pertinent is United States Code, Title 28, § 1738A(g):

> A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to

> make a custody or visitation determination.

(Emphasis supplied).

When Judge Mason first asked the Father whether issues concerning Christopher were then pending in New Hampshire, it triggered the Clintonesque response of, in effect, "That all depends upon what 'pending' means." The exchange between the two was revealing.

> THE COURT: [T]here's also an argument ... that because the same or similar action is pending in another state, that I should defer to the jurisdiction of that state.
>
> MR. MITRANO: First of all, I want to say it is not pending, as I understand the word "pending."
>
> . . .
>
> THE COURT: Let me ask this: There are proceedings ongoing in the of New Hampshire that relate to this matter?
>
> MR. MITRANO: Okay, there was a sale of my property in New Hampshire, pursuant to certain allegations of judgment. I filed a petition--still objecting to the jurisdiction of the New Hampshire

Court--I filed a petition for redemption, because the New Hampshire law allows a redemption period of one year if certain moneys are paid and I exercised that right.

That's the decision of March that came from the New Hampshire Court dealing with the redemption of that property. It's not--what I wouldn't really call that the custody proceeding because the custody--I just want to make clear that I contend that the New Hampshire custody matter is not pending at this time.

THE COURT: ... [A]re you telling me are you representing to the Court that there are no ongoing court actions relating to the issue of the custody of your child in the courts of New Hampshire, without regard to whether they are properly ongoing?

MR. MITRANO: Okay.

THE COURT: Are you telling me that New Hampshire is not taking any action with respect to custody and/or visitation of your minor son in this case?

MR. MITRANO: As I understand it, yes. I'm saying my understanding is premised on my understanding of the word "pending."

THE COURT: I didn't say pending. I took that word out of it.

MR. MITRANO: Well, okay--

THE COURT: When is the last time that a court in New Hampshire issued an order that related in any way to your son?

MR. MITRANO: ... I'd say the last time they issued an order related to my son was September 27th. 2002--but I want to qualify that. Since then. there have been issues about child support, but child support and custody are two different matters. As far as custody, the last order was issued September 27th, 2002, with respect to custody. And then there's been an issue of payment of child support, and my property or the house I used to live in in New Hampshire was sold in December, 2006, without giving me any notice of the sale prior to the sale.

But, in any event, I did file a petition in December of 2007 requesting that I be allowed to redeem the property, and in that order that came out of the court in March, from Lebanon, New Hampshire, they denied my right of redemption and they also stated I was behind in child support, and issued a capeous for

my arrest, I believe, and the made other statements.

That order has been appealed. I appealed it, I filed an appeal, a timely appeal, to the Supreme Court of New Hampshire. So, it's presently pending--that matter is presently pending before the Supreme Court of New Hampshire, but it deals with, in my mind, the redemption of the property. But I did –

THE COURT: Let me ask you this: Aren't custody and support inter-related? Because the person entitled to support of necessity you would think would be the person having custody, so if they didn't have custody they wouldn't be entitled to support. If the courts were to grant you custody, then you'd be entitled arguably to support.

MR. MITRANO: There's a distinction in my mind between custody and child support. Right now I'm arguing custody. They are, obviously they're related, because as the Court just stated, but there's a distinction in my mind between a custody issue and a child support issue –

THE COURT: Yes.

MR. MITRANO: – and right now I'm asking for enforcement of a custody order.

> THE COURT: Let me ask you this: Did the order of support arise out of the same case that the order for custody arises out of? Or are they separate actions?
>
> MR. MITRANO: In New Hampshire I believe they've incorporated in the same--there's an incorporation of a payment, it's attached I believe to the complaint.
>
> THE COURT: So. it's the same case.
>
> MR. MITRANO: Right, right.
>
> THE COURT: Okay.

(Emphasis supplied).

We are satisfied that issues related to the custody of Christopher were, indeed, pending in New Hampshire.

Judge Mason's final reason for dismissing the suit was that the critical issue of whether New Hampshire had jurisdiction over the custody of Christopher had not only already been litigated but had been litigated and relitigated and then litigated again.

> THE COURT: I will tell you right now that with respect to that argument of whether the New Hampshire order is void, it is the Court's view having looked at your proceedings that you cannot now litigate that issue before this Court for a number of reasons one of them

> being estoppel or issue preclusion, which is: You have litigated that . . . particular issue in a number of different courts, and that particular issue has been finally determined as to you, against you. So, you cannot raise and litigate that issue again here – without regard to whether you filed a claim or not – you are precluded from contesting that issue. So I'll not hear you that the New Hampshire order in '02 was moot or void.

(Emphasis added).

As the Father continued doggedly to attack the validity of the New Hampshire decisions, Judge Mason reiterated his position.

> THE COURT: I've seen those arguments, I've read those arguments, but I will not entertain those arguments. That issue has been resolved adverse to you, and it is my view that you cannot now contest that same issue in this proceeding. [C]ertainly I understand respectfully you disagree and you have that issue you can take up on appeal. If I'm wrong, they'll tell me I'm wrong.
>
> MR. MITRANO: Okay, but if I may just explore that –

> THE COURT: No, you don't need to explore it because I've read your pleadings. Your pleadings are voluminous, I've read them, I understand the argument, I just believe that that has been finally adjudicated, as to you.

(Emphasis added).

When the issue of New Hampshire's jurisdiction over the custody of Christopher was presented to Judge Mason, trial courts in Virginia, in New Hampshire, and in Vermont had all ruled that New Hampshire had proper jurisdiction. The Supreme Court of New Hampshire and the Supreme Court of Vermont had both held that New Hampshire had proper jurisdiction. Federal courts in both the First Circuit and the Fourth Circuit had ruled that New Hampshire had proper jurisdiction. It would have been a bold pronouncement for Judge Mason to have said otherwise, which, of course, he did not. As the hearing of April 18, 2008, concluded, Judge Mason once again was forced to repeat that the issue had been laid to rest.

> THE COURT: I determine that you are precluded from raising it, so I will not entertain an argument that the New Hampshire order is moot or void--okay? For the reasons that you assert in your pleadings. I disagree. It's, for

> purposes of this hearing, a valid order when it issued, and there are then matters still pending in New Hampshire relating to that same case.
>
> MR. MITRANO: If the Court is ruling that the New Hampshire order is valid —
>
> THE COURT: For purposes of this hearing and as to you, yes, I am. I'm saying that you're precluded from contesting its validity.

(Emphasis supplied).

Amen! We could readily have affirmed Judge Mason's ruling far more summarily. We have analyzed it in greater depth, however, for the potential guidance of possibly similarly situated colleagues in other states. Although the calendar has but thirteen months to run before this child reaches the age of emancipation, there are still 46 states that have not rejected the Father's arguments. For all we know, the Mother, from her "home state" of New Hampshire, may have been improvident enough to have risked overnight shopping trips into Connecticut or Massachusetts or, God forbid, Quebec. We would be loath to see the final act of this long running drama play out at the Hague.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2804

September Term, 2006

PETER PAUL MITRANO

v.

VIRGINIA LEE KELLY

Murphy, C.J.,
Getty, James S.,
(Ret., specially assigned),
Alpert, Paul E.,
(Ret., specially assigned),
JJ.

Opinion by Alpert, J.

Filed: August 20, 2007

This appeal arises from an ongoing custody dispute between appellant Peter Paul Mitrano, and appellee, Virginia Lee Kelly, Mitrano's ex-wife. The dispute has crossed several state lines. In Maryland, in the Circuit Court for Montgomery County, Mitrano sought the issuance of a warrant to take custody of a minor child born to the marriage and a determination of whether an *ex parte* order of the New Hampshire, Judicial Branch, Family Division awarding sole temporary custody of the minor child to Kelly was void. The Circuit Court for Montgomery County denied appellant's request to take the child into custody, but issued a temporary restraining order prohibiting Kelly from removing the minor child from the State of Maryland. The circuit court did not rule on the validity of the New Hampshire court's order. Mitrano noted this appeal and presents two questions for our review:

> I. Did the circuit court err in denying Mitrano's motion for issuance of a warrant to take custody of the minor child?
> II. Did the circuit court err in failing to rule on whether the *ex parte* order of the New Hampshire court was void as a matter of law?

We conclude that this appeal is not properly before us.

BACKGROUND

For the sake of clarity, we set forth the relevant events as a time line:

September 4, 1992	Mitrano and Kelly were divorced by Order of the Circuit Court for Fairfax County, Virginia, which also awarded Mitrano and Kelly joint physical and legal custody of the three minor children born to the marriage: Christina Lee Mitrano, born October 4, 1985; Peter Paul Mitrano, born December 27, 1986; and Christopher Louis Mitrano, born December 21, 1991. It was also ordered that the children would reside primarily with Mitrano.[1] The

[1]The Order provided that "the minor children of the parties shall reside primarily with Peter [Mitrano], and the minor children shall be with their mother on each Wednesday from 5:00 p.m. until 8:00 p.m., for dinner, and the first weekends of each month beginning at 6:00 p.m. on the first Friday of each month continuing until Monday at 9:00 a.m., or when school begins...."

	youngest child, Christopher, the subject of the current dispute, is the only child who is still a minor.
Spring 1993	Mitrano moved to New Hampshire with the three minor children and Kelly consented to this move.
Late 1993 or 1994[2]	Kelly moved to New Hampshire and resided with Mitrano and the children in Mitrano's house located in Hanover, New Hampshire.

[2]The New Hampshire, Judicial Branch, Family Division, found that Kelly lived with Mitrano and the children from approximately December 1993 until approximately October 2000. Mitrano asserts that Kelly resided with him and the children in New Hampshire from late 1994 until approximately October 1, 2001. When Kelly registered the Fairfax County Circuit Court child custody order as a foreign decree in New Hampshire, she indicated that she had resided in New Hampshire since 1994.

October 2000	Kelly moved to Vermont.[3]
October 3, 2000	Kelly registered the Fairfax County Circuit Court child custody decree in New Hampshire.
October 16, 2000	Kelly filed an *ex parte* petition in the State of New Hampshire, Judicial Branch, Family Division, seeking sole legal and physical custody of the minor children. Kelly alleged that, on September 13, 2000, Mitrano had

[3]The exact date of this move is not clear, but in Kelly's *ex parte* petition filed in New Hampshire on October 16, 2000, she asserted that, on October 12, 2000, Mitrano had informed her that if she filed any papers with the court seeking modification of the child custody or support orders, she could no longer live in the Hanover residence. In her petition, she also asserted that she had rented a house suitable for her and the three minor children. In a statement of facts that were not disputed by Mitrano, the Supreme Court of Vermont indicated that Kelly had moved to Vermont on October 6, 2000.

	spanked Christina "in a fit of anger" and left her "physically bruised[.]" The court granted temporary custody of Christina to Kelly.
December 28, 2000	Following a hearing on the Family Division's *ex parte* order, that court awarded temporary custody of Christina to Kelly.
December 2000	Mitrano moved to Virginia with Peter, Jr., and Christopher without notifying Kelly.
January 3, 2001	Kelly filed an *ex parte* petition in the State of New Hampshire, Judicial Branch, Family Division, seeking sole temporary physical custody of Peter, Jr., and Christopher. The Family Division granted the petition.
January 5, 2001	After the Circuit Court for Fairfax County ruled that Mitrano was

joining her following the October 16 order. He concludes that these events deprived New Hampshire of "home state" status. This argument is without merit. The PKPA provides that a state makes a custody determination consistent with the PKPA if it has jurisdiction under its own laws and "such State ... is the home State of the child on the date of the commencement of the proceeding." 28 U.S.C. § 1738A(c)(1) & (2)(A) (emphasis added). "Home state" is defined as "the State in which, immediately preceding the time involved, the child lived with his parents [or] a parent ... for at least six months." 28 U.S.C. § 1738A(b)(4). The parties and their children had been living in New Hampshire for the seven years prior to the court assuming jurisdiction on October 16, 2000, when the modification proceeding was commenced by mother's petition.[1] Furthermore, father states in his filing before the trial court that Virginia--the state issuing the original custody decree--had declined jurisdiction in favor of New Hampshire. See 28 U.S.C. § 1738A(f) (allowing modification of a custody decree from another state if the state has declined to exercise

	an emergency petition for enforcement of the Fairfax County Circuit Court custody order.
January 11, 2001	Following a hearing on Kelly's petition in the New Hampshire Family Division at which Kelly and Mitrano were present, the court denied Mitrano visitation, ordered him to pay support, and found him in contempt for removing the children from New Hampshire without seeking permission from the court.
January 23, 2001	The Vermont Family Court dismissed Mitrano's petition, finding that under the Parental Kidnaping Prevention Act, 28 U.S.C. § 1738A [hereinafter 'PKPA"], New Hampshire was the "home state" on the date the proceedings commenced, that Mitrano "[was] not entitled to enforcement

of the Virginia Order, because it [had] been superseded by the New Hampshire Order[,]" and that Mitrano therefore failed to state a claim upon which relief could be granted.

January 24, 2001 The Supreme Court of
January 24, 2001 New Hampshire denied Mitrano's emergency petition.

August 29, 2001 August 29, 2001 The Supreme Court of Vermont affirmed the decision of the Vermont Family Court determining that the New Hampshire court properly exercised jurisdiction consistent with the PKPA.

2002-2003 2002-2003 Mitrano filed motions in the United States District Courts for the District of New Hampshire and the Eastern District of Virginia, which were denied or dismissed and

	the denial or dismissal affirmed on appeal.
January 16, 2007	Mitrano filed a complaint in the Circuit Court for Montgomery County alleging that Kelly and Christopher, who was still a minor, resided in Montgomery County. Mitrano sought enforcement of the Virginia Custody Order, issuance of a warrant to take physical custody of Christopher, a declaratory judgment that the New Hampshire custody orders were void, or, in the alternative, modification of the custody and support order from New Hampshire. Mitrano filed an affidavit asserting that Christopher had lived with Kelly "in the State of Maryland since approximately the Fall of 2005 (except for

attending boarding school in the State of New York during the school year for 2005/2006)[.]"

January 17, 2007 — Mitrano filed three motions in the Circuit Court for Montgomery County:

1) Emergency Motion for Temporary Restraining Order to Prevent Defendant [Kelly] from Removing Minor Child from the State of Maryland Pending Determination of Declaratory Judgment Action. In this motion, Mitrano alleged that he had spoken to Kelly by calling a Maryland telephone number and informed her that Christopher was to remain in Maryland.

2) Emergency Motion and/or Request and/or Second Verified Application for the Issuance of a Warrant to take Custody of Child.

	In this motion, Mitrano sought the issuance of a warrant to take immediate custody of Christopher. 3) Emergency Motion to Determine Whether the Subject New Hampshire Order is Void as a Matter of Law. A hearing was held before the Circuit Court for Montgomery County, which entered an order enjoining Kelly from removing Christopher from the State of Maryland without leave of the court.
January 17-29, 2007	Montgomery County Sheriffs Office attempted service eight times at residence in Bethesda that Mitrano alleged was where Kelly was residing with Christopher.
January 30, 2007	Mitrano filed a motion in the Circuit Court for Montgomery County to allow service of the

temporary restraining order by other means. The court denied the motion as it appeared that Christopher was no longer in the state and thus there was no need for immediate injunctive relief.

February 9, 2007 — Mitrano's motion to continue hearing on the temporary restraining order scheduled for this date was granted and a new hearing date of March 2, 2007, set. In the motion, Mitrano averred that, on January 29, 2007, when the Montgomery County Sheriff's Office attempted service on Kelly, the sheriff was informed by the desk clerk that Kelly had not been seen in the past two weeks. Mitrano further alleged that, after the temporary restraining order was sent to the Sheriff's Office in New Hampshire, on February 5, 2007, a

	New Hampshire sheriff spoke with Kelly, who informed the Sheriff that she was at work.[5]
February 16, 2007	Mitrano noted an appeal to this Court.
February 20, 2007	Circuit Court for Montgomery County ordered that the temporary restraining order was to remain in effect.
March 2, 2007	Mitrano moved to continue the hearing set for this date as Kelly had not been served. New hearing date of April 13, 2007, set.
March 20, 2007	Kelly filed a motion in the Circuit Court for Montgomery County to dismiss Mitrano's motion for a temporary restraining order to prevent her from removing Christopher

[5] In 2000, Kelly was employed at Dartmouth College as a nurse doing clinical research.

prevent her from removing Christopher from the State of Maryland. Mitrano filed a motion in the Circuit Court for Montgomery County to determine whether the order of the New Hampshire Family Division is void *as a* matter of law.

DISCUSSION

In Mitrano's first question, he asks whether the trial court erred in failing to grant his motion to issue a Warrant to take custody of Christopher, but fails to present argument in support of his position. *See* Md. Rule 8-504(a)(5) (a party's brief must include argument in support of the party's position); *Klauenberg v. State*, 355 Md. 528, 552 (1999) ("arguments not presented in a brief or not presented with particularity will not be considered on appeal") (citation omitted). Instead, Mitrano focuses his argument on the validity of the *ex parte* order from the New Hampshire Family Division and asserts that all judgments or orders entered by the New Hampshire court are void because of a lack of subject matter jurisdiction. He asserts that the New Hampshire court violated 28 U.S.C. § 1738A(e) by issuing the *ex parte* order granting sole temporary custody of the child,

Christopher,[6] to Kelly. He contends that when Kelly commenced custody litigation in New Hampshire on October 16, 2000, under 28 U.S.C. § 1738A(b)(4), Christopher did not have a "home state" because, on or about October 1, 2000, Kelly had moved to Vermont and Christopher was living with her on certain weekends. More importantly, Mitrano asserts that New Hampshire was not the child's "home state." Mitrano further alleges that when he left New Hampshire and moved with Christopher back to Virginia on December 20, 2000, in accordance with 28 U.S.C. § 1738A, the New Hampshire court no longer had subject matter jurisdiction. Thereafter, Kelly returned to Vermont with Christopher. Mitrano thus concludes that the order of the New Hampshire court violated 28 U.S.C. § 1738A(e) and that any decisions from the state courts of New Hampshire are void as a matter of law because the courts lacked subject matter jurisdiction.

Mitrano claims that the Commonwealth of Virginia had and has continuing jurisdiction based on his and/or the paternal grandparents' residences there. Although he asserts that jurisdiction resides with Virginia, he also claims that this Court has

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[6]Although this order granted Kelly temporary custody of all three children, the present dispute involves only Christopher because he is the only child who is still a minor.

> authority to examine whether the New Hampshire to examine whether the New Hampshire court had subject matter jurisdiction to render the decision granting sole temporary custody of Christopher to Kelly. He asks this Court to find that the plain language of 28 U.S.C. § 1738A(c)(2)(A) means that the New Hampshire court no longer had jurisdiction after all the parties moved from that State.

In the alternative, Mitrano claims that even if the New Hampshire court had jurisdiction, the *ex parte* order granting sole temporary custody of Christopher to Kelly was void because the notice required by 28 U.S.C. § 1738A was not given. Accordingly, Mitrano claims, the *ex parte* order from New Hampshire is not entitled to full faith and credit.

Kelly responds that this Court lacks subject matter jurisdiction over this action and that the New Hampshire courts have jurisdiction. She also claims that there is no final or interlocutory order from which Mitrano may appeal. We begin by determining whether this appeal is properly before us.

In general, appeals may only be taken from a final judgment of the trial court pursuant to Md. Code (1974, 2006 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article, which states that "a party may appeal from a final judgment entered in a civil ... case ... [whether] entered ... in the exercise of original, special, limited, or statutory jurisdiction, unless ... expressly denied by law." *Smith v. Taylor*, 285 Md. 143, 146 (1979); *see*

also Popham v. State Mut. Ins. Co., 333 Md. 136, 142 (1993) ("Unless an appeal is from a final judgment, the appellate court does not acquire subject matter jurisdiction to review it.") (Citations omitted). "A ruling of the circuit court, to constitute a final judgment, must, among other things, be an 'unqualified, final disposition of the matter in controversy.' *Gruber v. Gruber*, 369 Md. 540, 546 (2002) (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)). Stated another way, "[f]or the trial court's ruling to be a final judgment it must either determine and conclude the rights of the parties involved or deny a party the means to 'prosecut[e] or defend[his or her rights and interests in the subject matter of the proceeding.'" *In re Billy W.*, 386 Md. 675, 688 (2005) (quoting *Rohrbeck*, 318 Md. at 41). "In considering whether a particular court order or ruling constitutes an appealable judgment, we assess whether any further order was to be issued or whether any further action was to be taken in the case." *In re Samone H.*, 385 Md. 282, 298 (2005) (citation omitted).

Clearly, the circuit court's denial of Mitrano's motion to take Christopher into custody was not a final judgment as it did not finally dispose of the controversy. The order of the circuit court was thus interlocutory and ordinarily is not appealable unless it falls within one of the statutory exceptions set forth in Md. Code (1974, 2006 Repl. Vol.), § 12-303 of the Courts and Judicial Proceedings Article [hereinafter "C.J."]. *In re Samone H.*, 385 Md.

at 298. Relevant to our discussion is the exception provided in § 12303(x), which states:

> A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:
>
> * * *
>
> (3) An order:
>
> * * *
>
> (x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order[.]

Accordingly, to be appealable under Section 12-303(x), an order denying Mitrano's motion to take the child into custody must either operate to deprive Mitrano of the care and custody of Christopher or change the terms of Mitrano's care and custody of the child. *In re Samone H.*, 385 Md. at 299 (commenting that to be appealable under C.J. § 12-303(x), the denial of a motion for an independent study on bonding between the mother and her children had to either operate to deprive the mother of the care and custody of her children or to change the terms of her care and custody of the children). In the present case, the order denying Mitrano's request to take

Christopher into custody did not operate to deny Mitrano the care and custody of Christopher or change the terms of Mitrano's care and custody of the child. The denial simply maintained the status quo. If the motion had been granted, care and custody of Christopher would have been taken away from Kelly, who had been granted sole temporary custody of the child by the New Hampshire Family Division. With the motion to take Christopher into custody, Mitrano was, in effect, asking the Circuit Court for Montgomery County to alter the custody order that had been in effect since 2001. The denial of that motion did not deny Mitrano of the care or custody of his child or change his care or custody of the child and is thus not an interlocutory order appealable under C.J. § 12-303(x). *See generally In re Billy W.*, 386 Md. at 692 (orders continuing the permanency plans for the four children were not appealable because the orders did not detrimentally affect the mother's custody rights or visitation with the children, even though the mother had sought full custody); *In re Samone H.*, 385 Md. at 315-16 (trial court's denial of mother's request for an independent study of the bonding between herself and the children, who had previously been found to be children in need of assistance, was not an interlocutory order appealable under C.J. § 12-303(x) because the denial of the mother's request did not change the permanency plan, which was for the adoption of the children;

> the mother's rights would have been implicated if the permanency plan had been for reunification and the court had changed the plan to adoption); *Gruber,* 369 Md. at 546-48 (circuit court's determination that it had jurisdiction to determine custody of the parties' minor children was not an appealable order under C.J. § 12-303(x)

because it did not deprive a parent of care and custody of a minor child). *Cf. Frase v. Barnhart,* 379 Md. 100, 115-20 (2003) (circuit court's denial of the mother's motion to postpone a review hearing was appealable under C.J. § 12303(x) because implicit in the denial of the motion to postpone was also the denial of the mother's request to strike the conditions of the custody order requiring the mother to apply for and accept residence at St. Martin's House because those conditions effectively undermined the discretion that goes with legal and physical custody of the child.)

Further, the docket entries reveal that Mitrano's motion to determine whether the subject New Hampshire order is void as a matter of law is still open and that, on March 20, 2007, Mitrano requested a hearing on that motion. Accordingly, the motion is still before the circuit court for consideration and any determination by this Court regarding an alleged failure to rule by the circuit court would be premature.

APPEAL DISMISSED.
COSTS TO BE PAID BY APPELLANT.

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

PETER PAUL MITRANO

Plaintiff

v. **Case No.: 59774-FL**

VIRGINIA LEE KELLY

Defendant

TEMPORARY RESTRAINING ORDER

UPON CONSIDERATION of Plaintiff's Emergency Motion for a Temporary Restraining Order Pending Resolution of Plaintiff's Petition to Enforce Virginia Custody Order, notice having been given to Defendant, Defendant having made no appearance, and a preliminary hearing having been held, it is this 17th day of January, 2007, by the Circuit Court for Montgomery County, Maryland:

ORDERED that the Defendant, Virginia Lee Kelly, be, and hereby is, prohibited from removing the minor child, Christopher L. Mitrano, from the State of Maryland, pending a further hearing on Motion for a Temporary Restraining Order; and it is further

ORDERED that, pursuant to Maryland Rule 2-121, the Plaintiff serve a copy of this Order, Plaintiff's Motion for Temporary Restraining Order and Plaintiff's Petition to Enforce Virginia Custody Order on the Defendant, in person, by the 29th day of January, 2007; and it is further

ORDERED that, unless Defendant requests an expedited hearing in accordance with the Maryland Rules, a further hearing on Plaintiff's Motion for a Temporary Restraining Order be, and hereby is, set for the 9th of February, 2007 at 9:30 a.m. for one half-hour.

_____/s/_____
The Honorable Durke G. Thompson
Circuit Court for Montgomery County, MD